S.B. CIVIL MISC. APPEAL NO. 1269/2006
(Smt.Nivedita Bhargava & anr. Vs. Smt.Ranjit Kaur & anr.)

DATED : 12th September 2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Chaudhary for the appellants.

*****

By way of this appeal against the award dated 04.02.2005 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.139/2002 the claimant-appellants seek enhancement over the compensation amount of Rs.4,16,088/- awarded by the Tribunal on account of accidental death of Saurabh, son of the appellant No. 1 and brother of the appellant No. 2.

On 28.07.2001 at about 11.00 a.m. in Chirwa valley near Udaipur the deceased Saurabh sustained grievous injuries when the car bearing registration No. RJ 27 C 8590 he was traveling in was hit by on-coming truck bearing registration No. HR 37 A 0239; and expired after seven days of accident while undergoing treatment at Ahmedabad.

The present appellants claimed compensation on account of death of Saurabh stating his age at 27 years,his having already cleared C.A. Intermediate; and being engaged

in Accounts work earning about Rs.12,000/- per month.

The Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid truck HR 37 A 0239 and held the respondents liable for compensation. While taking up quantification of compensation, the Tribunal found that the age of the deceased was 27 years and he had already passed B.Com. and C.A. Intermediate; but observed that so far his existing income was concerned, though a certificate Ex. 48 was produced stating his being engaged as Manager in Rajesh Suhalka & Co. at monthly salary of Rs. 8,000/- from the month of April 2001 but the person issuing such certificate was not examined and such salary income could not be considered for the deceased. Looking to the qualification already acquired by the deceased, the Tribunal estimated his income at Rs. 3,000/- per month and after deducting one-third on personal expenditure took the loss of contribution for the claimant No. 1 at Rs.2,000/-per month and looking to the age of the claimant at about 50 years at the time of accident applied a multiplier of 13 and thereby calculated pecuniary loss at Rs.3,12,000/-. The Tribunal also awarded Rs.2,000/- towards funeral expenses and Rs.10,000/- towards non-pecuniary loss. The Tribunal further considered the bills of treatment expenditure of the deceased of about Rs. 82,230/- and providing for other components of loss to the attendants

allowed further Rs. 90,000/- on this count. The Tribunal also allowed Rs. 2,088/- spent on advertisement of notice of the claim application in newspaper. The Tribunal has, therefore, made an award in the sum of Rs.4,16,088/- in favour of the claimant No.1 and allowed interest at the rate of 6% per annum from the *date* of filing of the claim application.

Learned counsel appearing for the appellants has contended that looking to the age and income of the deceased and future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel strongly relied upon the decisions of this court in Smt. Kalli & Ors. Vs. Indra Raj Bairwa & Ors.: 2004 WLC (UC) 789 and in Mohini Devi & Anr. Vs. Rajasthan State Road Trasport Corporation: 2004 RAR 299. Learned counsel also submitted that the Tribunal has erred in awarding interest only at the rate of 6% per annum.

Having given a thoughtful consideration to the submissions and having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The deceased was 27 years of age and when no definite proof of income of the deceased has been produced and the deceased has not been shown in any settled

employment the Tribunal cannot be said to be in error in taking a reasonable figure of Rs. 3,000/- per month towards his estimated income. The cases sought to be relied upon by the learned counsel proceed on their own individual facts and have no direct application to the facts of the present case.

Moreover, the deceased was admittedly an unmarried person and the Tribunal has proceeded to take entire of 2/3rd of his estimated income towards loss of contribution for the claimant, mother. This court is of opinion that for proper and reasonable estimate of loss of contribution in case of an unmarried person, likelihood of future diversion of income towards his own family cannot be ignored; and for the parents ordinarily loss of contribution cannot be taken beyond 50% of his estimated income. In the present case, the claimants, mother and brother of the deceased were not solely dependent upon him as the father of the deceased, though having not joined in the claim application, has appeared in evidence as AW-1. Viewed in the totality of circumstances, loss of contribution taken by the Tribunal in this case at Rs. 2,000/- itself stands on much higher side. Even if some component towards future prospects and enhancement in earnings of the deceased be added, as argued by the learned counsel, yet other future contingencies, particularly of diversion of larger part of income towards his own family

cannot be ignored and in the ultimate analysis the pecuniary loss assessed by the Tribunal in the sum of Rs. 3,12,000/- by taking loss of contribution at Rs.2,000/-per month and with application of multiplier of 13 stands definitely on higher side. Reasonably higher amount towards treatment expenditure and for the attendants has also been awarded at Rs. 90,000/- in view of 7 days of hospitalization of the deceased. The Tribunal has further allowed reasonable amount towards funeral expenses, and non-pecuniary loss. The Tribunal has of course awarded interest only at the rate of 6% per annum but in view of the liberal award made by the Tribunal, such choice of rate of interest cannot be said to be unjustified.

In the overall circumstances, this Court is satisfied that the claimant has been awarded higher amount than that of just compensation admissible in this case and there is no scope for upward revision.

In the aforesaid view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

MK